



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/171817

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 2016, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Dunn County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2016, at Menomonie, Wisconsin.

The issue for determination is whether the FoodShare agency correctly seeks to sanction the petitioner for not complying with the program's FSET provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner used all of his time-limited FoodShare benefits before January 7, 2016.

3. Before January 7, 2016, the petitioner did not have verification from his physician that he could not work.
4. The petitioner reapplied for FoodShare on December 21, 2015, and he was found eligible the next month. Later, the agency rescinded his eligibility because he had used up his time-limited FoodShare benefits.
5. The petitioner contends that stomach issues prevent him from working at least 20 hours per month. The FSET agency informed him that he cannot obtain a doctor's note indicating he cannot work because he has already used all of his time-limited benefits.
6. The petitioner has presented no medical proof that he cannot work.

DISCUSSION

Federal FoodShare law directs states to require recipients to work or participate in a Food Stamp Employment and Training Program (FSET) or a similar program. 7 CFR 273.7(a)(i). Wisconsin obtained a waiver that had made the FoodShare program's work requirements voluntary since 2008. In 2014, the state again made the work requirements mandatory. Wis. Stat. § 49.79(10). Persons between 18 and 50 years old who are neither pregnant nor have children under 18 and who are mentally and physically able to work cannot receive FoodShare for more than three full months in any 36-month period unless they comply with the program's work requirements. 7 CFR § 273.24(b); Wis. Stat. § 49.79(10)(a)1 and 2. To comply with these requirements, a person must work or participate in an authorized program at least 20 hours per week. 7 CFR § 273.24(a)(1). But a person does not have to meet these requirements if he has "good cause" not to. Federal regulations allow states discretion to determine what *good cause* is, but include the following requirement:

Good cause includes circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

7 CFR § 273.7(2)

The county agency may verify good cause if there is a pattern of absences and the explanation of those absences is questionable. *FSET Handbook*, § 6.6.2. Persons who are unfit to work are exempt from work requirements. A person can be verified as unable to work by a statement from a health care professional or social worker. *FoodShare Wisconsin Handbook*, § 3.17.1.5.

The petitioner previously received FoodShare and did not comply with the program's work requirements. His benefits ended because of this. He now contends that he has a valid reason for not being able to work. However, the FSET agency told him that he could not submit a doctor's note to prove this because he had used up all of his time-limited benefits.

I question whether the agency can bar a disabled person from receiving FoodShare. This matter is a little different because the petitioner does assert that he is disabled but rather that he cannot work 20 hours a week. Regardless, it is not ripe for determination because he has not actually provided any proof from a doctor that he cannot work at least 20 hours a week. That means that at this point his contention is merely a theoretical one in which he is in effect requesting an advisory opinion; the Division of Hearings and Appeals does not issue advisory opinions. I realize that the agency said it would not accept such proof, but I suggest he obtain it anyway if his doctor will provide it. He can then reapply and submit it with his application materials. If the agency will not consider his application, he can file a new appeal. But I point out that although I have expressed doubts about the agency's stance, I have not actually reviewed the

merits of that stance. This means that nothing in this decision guarantees the petitioner that he will prevail if he files a new appeal.

CONCLUSIONS OF LAW

The petitioner cannot receive FoodShare without participating in the FSET program because he has not shown that he cannot work at least 20 hours per week.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of March, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 17, 2016.

Dunn County Department of Human Services
Division of Health Care Access and Accountability